

# State of Utah

## Title and Escrow Commission Meeting

### Meeting Information

Date: **August 16, 2006**

Time: 8:00am

Place: **Room 4112, State Office Bldg**

### Members

(Not Present = x)

#### Commission Members

Chairperson, Darwin L. Johnson, *Wasatch* Joyce W. Clark, *Washington*

David M. Lattin, *Salt Lake*

Glen W. Roberts, *Utah*

R. Curt Webb, *Cache*

#### Department Staff

John E. "Mickey" Braun, Jr.  
*Ass't Commissioner*

Perri Babalis  
*AG Legal Counsel*

Jilene Whitby  
*PIO/Recorder*

Darrel Powell  
*Dir. Market Conduct*

Gerri Jones  
*MC Examiner*

Sheila Curtis  
*MC Examiner*

xBrad Tibbitts  
*Dir. Life & P&C*

Gale Lemmon  
*AG Prosecutor*

#### Visitors

Sean Monson

Joseph McPhie

Larry Blake

Doug LeDoux

## MINUTES

- I. **Welcome and Introductions** / Darwin L. Johnson, Chair  
Darwin started the meeting at 8:15a.m., welcoming and introducing visitors.
- II. **Adoption of Minutes of Previous Meeting**  
Joyce made the motion to approve the minutes, David seconded it and the vote was unanimous.
- III. **Review & Concur with Licensee Report**  
The report was incorrect and will need to be run again. It will be provided at the next meeting.
- IV. **Review & Concur with Enforcement Case Report**
  - An enforcement action was taken against Minuteman Title Ins. Agency, Inc. for the late filing of their reports. Minuteman requested a hearing, which was held yesterday, August 15, resulting in the reduction of the forfeiture from \$1,000 to \$900, with a twelve-month probation and ten days to file the reports. Curt made the motion to concur with the department's action, Glen seconded the motion and the vote was unanimous.
  - Darwin asked if the department could provide the Commission with statistics on the complaints received; i.e. the number opened, closed with and without enforcement action taken. Darrel reported that they had 142 investigations in process, 54 new cases were opened in July and 51 were closed. Closure occurs when enforcement action has been completed, when there is not enough information to complete a case and some cases may resolve themselves. Some of the 51 closed have not yet completed the enforcement process. It can take one to two weeks to complete this process.
  - Glen asked the difference between "investigation" and "enforcement." An "investigation" gathers information and "enforcement" assesses that information and determines the penalty. Enforcement information is public information. If a case is closed without taking action, that is not public information. Mickey noted that it would be unfair to taint a person's reputation by releasing investigation information then find out it was an unfounded complaint.
  - Darrel promised to have a statistical report on investigations and enforcements at the September meeting. It would show stats from the first of year. Mickey noted that investigators were now opening a file for each name in an investigation, instead of one file for all involved in an investigation.

- David asked if the number of unsubstantiated complaints could be published. Gale said that GRAMA considers this information protected until it goes to enforcement and is finalized. Glen asked if he could find out the outcome on a complaint he filed? Darrel said a letter is sent to the complainant advising him that we have received his complaint and are investigating. Doug asked if it was possible for the complainant to call and see if the complaint had been closed? Darrel noted that if we said "yes" then more questions would be asked that we could not answer, especially if no enforcement action is taken. Joyce said that questions about the status of complaints entails 90% of the questions she received from industry. Gale suggested including in the letter to the complainant information about GRAMA and that we appreciate their input. Curt did not think that the law prohibited the department from telling what the results were. Perri said disclosure of investigation information might be based on what we do with the records. David said it was important that people not be discouraged from reporting and anything that we can do to encourage people to report should be done. Joyce suggested the possibility of providing a CE class to explain the investigation and enforcement process and GRAMA laws. Doug said that when a person files a complaint and it is not shown on the enforcement actions then they think it is okay for them to do it. Joyce said that people think big companies are not being fined because of their money. Darwin suggested asking ULTA to remind the industry to look at the department's "Enforcement" page on the website. To sum up, Perri will check the law to see what information about examination and enforcements can be made public, the letter to the complainant will be improved and we will try to better educate the public.

## V. Old Business

- **Number of Cases Open** / Mickey

Darrel said he was building a report format to extract this information from the database. Currently there were 142 investigations in progress, 51 were closed and 54 new investigations were opened. Darrel said that when a complaint is received, the department determines whether it goes to Market Conduct or Consumer Services. Darwin asked if these matters could be discussed in a closed meeting. Perri said that a closed meeting was to discuss the character of an individual, not the nuts and bolts of a case.

- **Can Missed Questions be Reviewed After Taking a Test?** / Mickey

Missed questions cannot be reviewed after taking a test due to confidentiality of the testing material. Joyce asked when they would know that their suggested changes to the test had been accepted. Mickey said they cannot disapprove the input. They will be accepted. Disapproved questions will be taken out of the database almost immediately. It will take a little longer to formulate new questions.

- **Escrow Filing Rules R592-3 & 4 Update** / Mickey

These rules were put into effect July 19, 2006. Gerri noted that there seemed to be some confusion about the \$25 filing fee. Should it be put on the transmittal form? Mickey suggested she notify the agencies by email of this fee.

- **Update on Challenge to 31A-23a-407** / Perri

The Attorney General's office filed the motion to join the suit, which was granted, and a brief supporting the constitutionality of the statute.

- **Draft of Fiduciary Rule, R592-5** / Dept.

- Sheila had invited Sean Monson to comment on this rule and his experiences with split closings.
- Mr. Monson said he has represented title companies and had dealt with a number of escrow cases.
  - He agrees with the elimination of split closings. The issue is, what are the parameters of a fiduciary's duty? One line of thinking is that an escrow agent only has to follow the terms of the escrow instructions. In the 1980s, California and Arizona escrow agents were required to disclose fraud or material facts. Utah's laws

are not clear on this. Utah court interpretations, not Federal, set the standard. This rule may not resolve this issue. Section 4(4)(C) and (4)(D) start to resolve the issue. I don't know if it requires the disclosure of fraud. Glen said this was not an issue the commission had been trying to resolve. He thought cases were moving in that direction though. Curt expressed reluctance to require the disclosure of fraud. How do we determine it is fraud? Clearly we have to follow escrow instructions.

- In Section 4(10)(B) what is the proof of identification? Do we want to specify? The REPC does not say. Gerri suggested referencing Title 46. Joyce said the Patriot Act mirrors that.
- Monson suggested clarifying what needs to be explained in (10)(C). Glen said that it is not our responsibility to explain documents since they are not our documents. The person should go to the lender for an explanation. Gerri noted that HUD requires an explanation. Glen thought this should be a separate rule. Curt suggested solving one thing at a time. Focus now on split closings. Doug noted that originally the rule was intended to force the escrow agent to have contact with the signer.
- The escrow agent does not issue all documents. There should be something in subsection (a) about the duty of the escrow agent.
- Glen made the motion to delete Subsection (4). Curt seconded the motion. All but Joyce approved the motion. Subsection (4) will be deleted from the rule along with all references to it.
- Gerri said she would like to see a reference to Title 46 in the rule. Curt did not see why. Perri said this rule is not the place to determine what is proper ID. Glen thought the rule needed to be very specific and other things should not be brought into it. Curt suggesting putting it in Subsection 4. Gerri said it is referred to in 31A-23a-407. Gale suggested incorporating Federal law in the statute and rule so we could enforce it. Glen made the motion to amend Subsection 7 to include the reference to Title 46. Joyce seconded the motion and the vote was unanimous.
- It was noted that there was no definition of the scope of an escrow. Nothing that prohibits them from having separate escrow. Curt suggested defining "transaction." Mickey said the department was unable to find a definition. Lenders consider themselves as separate escrow. They need to be considered part of the transaction. Gale suggested adding the wording: "All portions of an escrow including any loan that are dependent upon the completion of any closing of that escrow are considered to be a part of a single agent and must be completed by a single escrow."
- Perri noted that Federal law was cited incorrectly in Subsection (7).
- Gerri asked if the rule could reference HUD if the code does not? Perri wondered if that expanded our authority.
- Curt suggested modifying 4(2) as suggested and put "s" at end of "loan."
- Curt made the motion to approve the rule as amended and Joyce seconded it. The vote was unanimous.
- Perri noted that the citation in 4(7) differs from the code. It was suggested that instead of referencing a citation that it read; "Comply with all federal and state laws." Perri was concerned that we don't have the authority to include the citation. Curt made the motion to use the wording to "Comply with all federal and state laws." Glen seconded the motion and the vote was unanimous in its favor.
- Monson asked if (4)(a) applies to REPCs too. Curt said the rule should not be dependent on what is done with REPCs.
- Joyce made a motion to take a break at 9:55 a.m.
- Meeting resumed at 10:12 a.m.
  - Curt made the motion to add the following words to the beginning of 4(2); "Each transaction shall have no more than one escrow agent." Glen seconded the motion, and the vote was unanimous.

- Glen made a motion to approve this rule as modified today and prepare for dissemination to formal rulemaking. Curt seconded the motion. David asked if the motion should include possible revisions to Subsection (9)? Glen restated motion to accept Rule R592-5, Sections 1, 2, 3, 4, 5, and 6 as amended and to have it sent to formal rulemaking. **Perri will review Subsection (9) of Section 4 to see if additional changes should be made.** If changes are made they will be reviewed and approved by the Commission before filing for rulemaking. Get rid of subsections i. and ii. Curt seconded the motion and the vote was unanimous.
- It was agreed that the enforcement of the rule would begin 45 days after it becomes effective.

- **Update on ULTA's Subcommittee to review the NAIC's Insurer and Producer Model Acts** / Glen  
 ULTA will review the Producer Model Act. The challenge will be to get it ready for the upcoming legislature. Mickey noted that this will require changes throughout the code so it probably will not make the 2007 Legislature. **Gerri will send the Commission the changes she has made to it so far.**
- **Update on copies of Market Conduct Handbook for Commission** / Mickey  
 Handbooks have been ordered, however, the NAIC has a six-week backlog.

#### VI. **New Business**

- **Should Home Owner Associations be Required to Give a Contact Person Before Lien is Valid?** /Darwin  
 Glen said that ULTA is proposing an amendment which will require a statutory change. He did not think the Commission should pursue it.
- Gerri read the response to **Professor Easton's Rate Study**. The findings will be available in the fall. This is a nationwide study. **Gerri will send the Commission a copy of the response.**
- Gerri noted that Perri, who had to step away at the time, wanted to share an article with the Commission from the Office of Thrift Supervision. It was in regards to pass-through investments, what it means, what it is, describing the Federal statute, etc. This will be a step towards thrifts owning title companies. Gerri will send copy to Commission members.

#### VII. **Other Business from Committee Members**

- Darwin asked if everyone understood about the 1% premium endorsement? Gerri said they seemed to. She had not received inquiries about it.
- Glen noted that ULTA's Legislative Committee is trying to find someone to clarify the mechanics lien statute (38-1). It uses two conflicting numbers, 90 & 180 days to file and record, so it needs to be corrected.
- Glen asked that the next agenda include the subject of "Flips" from the list of priorities. **Gerri asked if she could invite Dee Johnson** from the Real Estate Division. Glen agreed.

VIII. **Reminder:** Next Liaison Meeting is October 2.

IX. **Next Meeting** September 15, 2006

X. **Adjourned:** At 10:38 a.m. Curt moved to adjourn and Glen seconded it.

#### *Next Meetings*

*8:00 a.m.*

<del>January 11, 2006</del>	<del>July 12, 2006</del>
<del>February 8, 2006</del>	August 16, 2006
<del>March 2, 2006</del>	September 13, 2006
<del>April 12, 2006</del>	October 11, 2006
<del>May 10, 2006</del>	November 8, 2006
<del>June 14, 2006</del>	December 13, 2006